IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 137 of 1994

with

CRIMINAL MISC. APPLICATION No 4041 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S.B.BARAD

Versus

STATE OF GUJARAT & 1

Appearance:

1. Criminal Revision Application No. 137 of 1994

MR JC SHETH for Petitioner No. 1

MRS MANISHA L SHAH, APP for Respondent No. 1

PARTY-IN-PERSON for Respondent No. 2

2. Criminal Misc. Application No. 4041 of 1998

PARTY-IN-PERSON for Petitioner

MR JC SHETH for Respondent No. 1

MRS MANISHA L SHAH, APP for respondent No.2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/07/2003

COMMON C.A.V. JUDGEMENT

1. This Revision Application is filed against an order passed by learned Joint District and Addl. Sessions Judge, Surat, on 20.12.1993 in Criminal Appeal No. 24/1992, wherein the judgment and order of the Judicial Magistrate, First Class, Railway Court, Surat,in Criminal Case No.3497/91 was reversed to the effect that the present respondent No.2 was convicted in the said Criminal Case by Railway Magistrate and reversing his judgment, learned Addl. Sessions Judge allowed the Criminal Appeal No.24 of 1992 and hence original complainant S.B. Barad, Ticket Collector, Surat Railway Station, filed this Revision Application.

2. The prosecution came to be launched against present respondent No.2 Mr. Y.A. Patel on the facts that on 10.9.1991 about 13.40 hours while respondent No.2 was coming out of the Surat Railway Station from the exit and complainant was stationed at the gate as Ticket Collector. The respondent No.2 entrusted to the complainant a ticket from Ahmedabad to Surat of a local train bearing No.43557. It is the case of the prosecution that in fact the respondent No.2 travelled by Howrah Express and hence after passing through the exit the respondent No.2 was called by the complainant and was made to stand aside and was asked to pay excess charges for travelling in Express Train by ticket of local train which according to the complainant was amounting to Rs. 68/- including penalty. When respondent No.2 refused to pay this amount, he was chargesheeted before the learned Judicial Magistrate, First Class, Railway, Surat, who recorded the deposition of the complainant and further statement of the accused i.e. respondent No.2 who also examined himself and thereafter the learned Magistrate, Railway in Criminal Case No. 3497/91 was pleased to convict the accused - present respondent No.2 under Section 137 of the Indian Railways Act sentencing him for fine of Rs.500/- and in default to undergo simple imprisonment of one month. Learned Magistrate, Surat, came to the conclusion that there was no reason for the complainant i.e. present applicant to file a complaint against the respondent No.2 and the defence which respondent No.2 advanced that he in fact travelled through Saurashtra Express and he had entrusted the

ticket of Saurashtra Express to the applicant could not be proved by him. Being aggrieved, the present respondent No.2 filed the above said Criminal Appeal No. 24 of 1992 in the Court of Sessions Judge at Surat.

3. Learned Advocate Mr.J.C.Sheth for the applicant, learned APP Mrs. Manisha L. Shah for respondent No.1 and respondent No.2 party-in-person were heard.

4. The learned Addl. Sessions Judge reversed the judgment and conviction on the ground that the prosecution was launched against respondent No.2 admittedly on the fact that he travelled through Express Train while he was holding ticket of local train thereby respondent No.2 was liable to pay difference and since this difference was not paid, he was chargesheeted. The learned Sessions Judge rightly pointed out that the prosecution under Section 137 can be launched only when a person with intent to defraud the railway administration enters or remains in any carriage on a railway or travels in a train in contravention of Section 55 or uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used. The learned Sessions Judge also rightly held that on admitted facts of the case, the action could have been taken only under Section 138 when any passenger as defined by Section 2(29) of the Railways Act is found travelling in Express Train through a ticket of a local train. In such circumstances, such passenger is liable to pay difference as mentioned under Section 138. If such passenger refuses to pay such difference, then he will be taken to nearest Magistrate or authorized employee of the Railway Administration may file an application to the Railway Magistrate for recovery of such sum as ascertained as mentioned under Section 138 and on Magistrate being satisfied shall order such sum to be recovered from such passenger and in default may impose imprisonment which may extend to one month but not less than 10 days. Such recovery of sum is recoverable as fine and such sum recovered, by provisions of Section 138, is made payable to the Railway Administration.

5. The learned Sessions Judge, therefore, came to the conclusion that prosecution against respondent No.2 under Section 138 was misconception and conviction was bad in law as awarded by learned Railway Magistrate, Surat. Learned Sessions Judge has also rightly observed that the conviction was awarded by the learned Judicial Magistrate, First Class i.e. Railway Magistrate, on account of failure on the part of the respondent No.2 to

prove his defence.

6. While taking into consideration both the orders as above said, it clearly appears that the view taken by the learned Addl. Sessions Judge, Surat, is legal and cannot be interfered with. Respondent No.2 was prosecuted under Section 138 and was convicted which was not applicable in the facts and circumstances of the case. Otherwise also, on facts it is found that it was never the say of the original complainant that respondent No.2 was actually found travelling in Howrah Express or alighting from said Train. In these circumstances, the defence of the respondent No.2 was, he travelled through Saurashtra Express and he handed over the tick of Saurashtra Express to the complainant. Only at the exit after handing over the ticket to the Ticket Collector, the respondent No.2 was made to stand on side and was asked to pay the difference. Thus, the case under Section 137 also could not be made out though the procedure as laid down under Section 137 was never followed by the complainant and hence the prosecution launched against respondent No.2 under Section 138 was held bad in law.

7. Respondent No.2 filed Misc. Criminal Application No. 4041/98 and an affidavit in support of the application, contending that the Revision requires to be dismissed and that respondent No.2 be awarded compensatory costs. The request is unreasonable and such request was rejected by learned Addl. Sessions Judge also. This is not a case wherein respondent No.2 is entitled to any compensatory costs nor this could be termed as vexatious litigation. This is a case where by misconception instead of taking action under Section 137, the prosecution under Section 138 of the Act, bona fide came to be launched against respondent No.2 which could not be proved by the Railway Administration, matter cannot be stretched far beyond this fact as to award any compensatory costs to the accused - respondent No.2 and, therefore Misc. Criminal Application No. 4041/98 must fail. However, if any fine paid by respondent No.2 in pursuance of the order of learned Magistrate in Criminal Case No. 3497/91, the same shall be immediately refunded to the respondent No.2 by the said court.

8. In the above view of the matter, Revision Application No.137/94 as well as Misc.Criminal Application No. 4041/98 are hereby dismissed. Rule is discharged.

(J.R. Vora, J.)

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